

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3241

IN THE MATTER OF:

Served October 24, 1988

Application of MIZELL TRAVEL AGENCY, ) Case No. AP-88-15  
INC., for a Certificate of Public )  
Convenience and Necessity to Conduct )  
Charter and Special Operations )

By application filed April 29, 1988, and amended July 7, 1988, Mizell Travel Agency, Inc. (applicant or Mizell), seeks a certificate of public convenience and necessity to transport passengers in special operations, restricted to round-trip sightseeing tours, between points in Washington, DC; Arlington, VA; and Fairfax, VA, and in charter operations between points in Washington, DC, and between points in the District of Columbia, on the one hand, and, on the other, Washington National Airport, Arlington County, VA, and Washington Dulles International Airport, Loudoun County, VA, restricted to transportation in vehicles with a manufacturers designed seating capacity of 15 persons or less, including the driver. \*/

A public hearing was held on July 7, 1988, pursuant to Order No. 3165, served May 10, 1988. Applicant presented a company witness and two public witnesses. Babel Travel Service, Inc. (Babel), protested the application and presented a witness at hearing. Bill Appell trading as Personal Pace Tours also protested the application and appeared at hearing. Gold Line, Inc., and National Coach Works, Inc., protested the application and appeared at hearing but withdrew their protests when Mizell requested and was allowed to restrict its application to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less including the driver. The Airport Connection, Inc., timely protested the application but withdrew its protest prior to hearing.

SUMMARY OF EVIDENCE

Mr. Isadore Mizell, applicant's president and co-owner, is a licensed tour guide. Applicant plans to offer individually-ticketed sightseeing tours that highlight the achievements of black Americans. The tours would include (in addition to such popular sights as the Lincoln Memorial, the Jefferson Memorial, the Vietnam Veterans Memorial, and Arlington National Cemetery, et al.) the District of Columbia's first black business district, the homes of Frederick Douglass, Mary McCleod Bethune, and Dr. Ralph Bunch, the former

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\*/ To the extent this application could be interpreted to include transportation solely within the Commonwealth of Virginia, the application is dismissed pursuant to the Compact, Title II, Article XII, Section 1(b).

headquarters of the National Council of Negro Women, Howard University, and points of interest relating to civil rights legislation of the 1960's. Applicant plans to offer an "All Day Tour" and a "Half-day Tour" of eight and four hours duration, respectively. The rates proposed for the "All Day Tour" are \$12 for adults and \$8 for children aged 3 to 12 years. The rates proposed for the "Half-day Tour" are \$6 for adults and \$4 for children. There would be no charge for children under three years old. The tours would not be available in the evening. Applicant projects that tours offered at reasonable rates would generate high load factors and would, therefore, offset what would otherwise be low revenues. Rates for the proposed charter operations would be \$100 per hour, with a one-hour minimum. Applicant's service would be available seven days a week from 9 a.m. to 5:30 p.m.

Initial operations would be conducted in one vehicle. Applicant would be willing to acquire additional vehicles if demand dictates. The vehicle to be used initially would be new, but applicant has not yet decided whether to purchase or lease it. Applicant's driver would make a daily vehicle maintenance check including brakes, oil and lights, and the oil would be changed every 3,000 miles.

As a late-filed exhibit, applicant submitted a revised balance sheet dated January 31, 1988, that listed current assets of \$41,556 and fixed assets, after allowance for depreciation, of \$1,448. Liabilities were listed at \$1,000 with \$42,004 in equity. Applicant's projected operating statement for the first year of operations shows "WMATC" revenues of \$29,000 and other operating income of \$6,000. Total operating expenses of \$23,880 are listed. Applicant is familiar with the Compact and the Commission's rules and regulations and intends to comply with them.

Ms. Marilyn Camphor, director of conference services for Dynamic Concepts, Inc. (DCI), testified in support of the application on that company's behalf. DCI provides conference services for public agencies and private parties. The services include arranging ground transportation for groups that range in size from 10 to 600, although the average group consists of about 50 persons. A large percentage of DCI's clients are members of a minority group and would be interested in viewing historic sites that highlight the achievements of black individuals. In addition, many of the persons for whom Ms. Camphor makes transportation arrangements are on a fixed per diem allowance that provides a maximum of \$10 for sightseeing expenses. For basic ground transportation, the witness is not faced with the same monetary constraints. It is estimated that DCI would use Mizell's special operations service once a month with 25 to 30 individuals requiring sightseeing services. It is further estimated that DCI would need charter service between points in the District of Columbia and for airport transfers an average of seven times a year, although it has had no need to date for charter transportation in 15-passenger vehicles.

Ms. Harriet Schwartz, president of National Place Travel, testified in support of the application on behalf of that travel agency. National Place Travel has a high volume of walk-in business

due to the agency's proximity to the Hotel Washington, and the Willard, Harrington and the Marriott hotels. The witness is often asked to make referrals for historic sightseeing trips. Ms. Schwartz strongly believes one should be knowledgeable regarding one's heritage and, should this application be granted, would recommend Mizell's service to those seeking a tour of the type applicant proposes. The witness considers the price proposed by applicant to be a "terrific bargain." She estimates her need for special operations of the type proposed by applicant to be about 15 times a month for an average of 75 people during the month. As to her need for charter service, Ms. Schwartz stated that she ". . . can't say yes and can't say no [regarding her need for such service in 15-passenger vans]."

Mr. Anthony Cueto, Babel's general manager, testified in opposition to the application on protestant's behalf. Babel holds WMATC Certificate No. 103 which authorizes special and charter operations between points in the Metropolitan District with certain restrictions (not here relevant). Babel's stock is owned primarily by members of Mr. Cueto's family, and the business qualifies as a minority concern. Babel operates coaches and 15-passenger vans. It provides sightseeing services tailored to its clients' specific needs at fares ranging from \$11 to \$16 per person for half-day tours. Babel also performs airport transfers. When requested, Babel offers both charter and special operations tours that highlight minority interests. On cross-examination the witness conceded that, in a group comprised of several different ethnic groups, a general consensus from the group would be needed before a specialized tour highlighting black history could be conducted. If a request for a black history tour is "voted down," Babel would make its charter services available to the individuals requesting the specialized tour. However, the charter rate of \$38 per hour with a four-hour minimum would be charged.

Mr. Bill Appell trading as Personal Pace Tours, who holds WMATC Certificate No. 130, cross-examined the witnesses but did not present any evidence. During cross-examination Mr. Appell revealed that the cost of his tour is \$42.50 per person.

#### DISCUSSION AND CONCLUSIONS

This application is governed by Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove it is fit, willing and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further provides that the applicant prove that the proposed service is required by the public convenience and necessity. Based on a review of the entire record in this case, we find that applicant has sustained the burden of proof imposed by the Compact as to special operations (sightseeing tours) but not as to charter operations.

Mizell's co-owner and president is an experienced tour guide who is familiar with the Metropolitan District and historical points of interest located therein. Applicant would commence operations with one new vehicle and intends to add equipment as demand dictates. The equipment would be regularly inspected. Applicant's balance sheet indicates adequate funds to commence WMATC operations. The record further indicates that the corporation's president is familiar with the Compact and the Commission's rules and regulations and is willing to comply with them. For these reasons, we find applicant fit operationally, financially, and as to compliance.

The Commission has relied on the criteria set forth in Pan-American Bus Lines Operations, 1 MCC 190, 203 (1936), to determine whether an applicant has satisfied its burden of proof that the public convenience and necessity require the proposed service. The Pan-American criteria are as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant, in its special operations proposal, would offer specialized sightseeing tours, largely oriented to black history, for which both public witnesses testified there is a public demand. DCI's representative placed special emphasis on the need for economical sightseeing service due to severe budgetary constraints under which most of her clients operate. DCI has a high volume of minority clients, and its representative believes that tours highlighting achievements of black Americans would be of interest to them. National Place Travel's representative testified to the need for a special operations tour that introduces visitors and residents of Washington, DC, to black history. The witness believes that she would be able to refer a significant number of patrons to applicant due in part to the high volume of walk-in tourists that her travel agency encounters on a daily basis. There is no evidence of any need for the proposed service in special operations to or from points in Fairfax, VA, and this portion of the application must be denied.

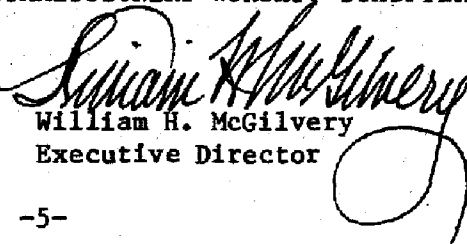
Neither protestant offers a black history tour that would be conducted on a daily basis without special request or group consensus. Neither protestant offers rates that are competitive with the rates proposed by applicant for its sightseeing tours, and both public witnesses expressed a preference for the significantly lower rates offered by applicant. Moreover, the record fails to support a claim that a new entrant into the market would endanger or impair the operations of any existing carrier contrary to the public interest.

Based upon the testimony of the witnesses, the application, and the documentary evidence submitted in this matter, we find that the proposed service in special operations (except to and from Fairfax, VA), will serve a useful public purpose for which there is a demonstrated need and which cannot be served as well by existing carriers. As to the proposed charter service, it is sufficient to note that there is no definitive evidence of record establishing a public need therefor and the application, to this extent, must be denied.

THEREFORE, IT IS ORDERED:

1. That Mizell Travel Agency, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers in special operations, restricted to round-trip sightseeing tours, between points in Washington, DC, and Arlington, VA; restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less, including the driver, and further restricted against transportation solely within the Commonwealth of Virginia.
2. That in all other respects the application of Mizell Travel Agency, Inc., is hereby denied.
3. That Mizell Travel Agency, Inc., is hereby directed, within 30 days of the service date of this order, to file with the Commission the following: (a) two copies of its WMATC Tariff No. 1 as revised stating with specificity the points to be covered in each tour to be offered together with the rate for each; (b) an equipment list specifying make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle to be used in WMATC operations; (c) evidence of ownership or a lease in conformance with Regulation No. 69 for each vehicle to be used in WMATC operations; (d) a certificate of insurance in accordance with Regulation No. 62; and (e) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 146 is hereby assigned.
4. That unless Mizell Travel Agency, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.
5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Mizell Travel Agency, Inc., in the form and as worded in the Appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director

NO. 146

MIZELL TRAVEL AGENCY, INC.

WASHINGTON, DC

By Order No. 3241 of the Washington Metropolitan Area Transit Commission issued October 24, 1988;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3241;

THEREFORE, IT IS ORDERED that the said carrier be, and is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers in round-trip sightseeing tours between points in Washington, DC, and Arlington, VA.

RESTRICTED to transportation in vehicles having a manufacturer's designed seating capacity of 15 persons or less, including the driver, and

FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.